

## Vocational Rehabilitation

If you have been unable to return to work as a result of your work-related injuries, you may benefit from Vocational Rehabilitation.

The Missouri Division of Vocational Rehabilitation is a program designed to help persons with a physical or mental impairment become employed. In Missouri the Department of Elementary & Secondary Education operates this program.

Vocational Rehabilitation provides a wide range of services, including vocational evaluation and training. There are Vocational Rehabilitation offices located throughout Missouri. To find the office nearest you, or for more information call TOLL FREE 1-877-222-8963, or visit its website at [vr.dese.mo.gov](http://vr.dese.mo.gov).

Under the Missouri Workers' Compensation law, employers are not required to provide vocational rehabilitation services to injured employees. However, employers may, in certain cases, agree to provide job retraining to severely injured employees. The Division of Workers' Compensation has the responsibility to ensure qualified practitioners and facilities are available and have the capability of providing the appropriate rehabilitation services for the injuries sustained. The Division of Workers' Compensation also has the responsibility of reviewing the written plan of care to ensure the goal of returning the employee to gainful employment is being implemented. To conserve state resources and reduce duplication of services, an interagency agreement has been entered into with the Department of Elementary and Secondary Education and the Division of Vocational Rehabilitation to provide this service. This program benefits both the employer and employee.

## Subrogation Rights Against Employee's Liability Claim

When a third person is liable to the employee for a work-related injury (or to the employee's dependent survivors for a work-related death), the employer and its workers' compensation insurer may be entitled to share in any settlement or recovery the employee or dependents may be entitled to receive. This is called a "right of subrogation," and is governed by §287.150, RSMo. This means that if you receive any workers' compensation benefits and also have a liability claim for the same injury, you cannot keep all of the money from the settlement or recovery in the liability claim; some portion of the settlement or recovery must be repaid to your employer or its workers' compensation insurer.

## Understand Your Rights and Obligations

If you have any questions about the issues contained in this publication, you may consult with an attorney. If you are unable to locate an attorney who practices workers' compensation law, you may wish to contact the Missouri Bar Lawyer Referral service at 573-636-3635.

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# Factors That May Affect An Employee's Workers' Compensation Case: A Brief Summary



Missouri Department of  
Labor and Industrial Relations  
**DIVISION OF  
WORKERS' COMPENSATION**

This publication contains a brief summary of issues that may have a bearing on an employee's workers' compensation case. There are certain benefits as well as specific obligations that can impact an employee's case that are not necessarily common to most work-related injuries. An employee is urged to pay attention to these circumstances especially when considering a settlement of his or her case.

## Medical Bill Collection Protection

If you have sustained an injury or illness covered by the Missouri workers' compensation law, any health care provider selected or approved by the employer should not attempt to collect any fee or any portion of a fee directly from you. However, you are protected against such collection efforts only if you notify the health care provider in writing by certified mail that the health care services provided to you involve a workers' compensation case. The notice should include:

- (1) The name of the employer;
- (2) The name of the workers' compensation insurance carrier, if known;
- (3) The name of the employee receiving the services;
- (4) The general nature of the injury; and
- (5) Where a claim has been filed, the claim number, if known.

If you do not seek to obtain workers' compensation benefits, or the injury or illness is found not to be compensable under the workers' compensation law, the health care provider may seek reimbursement of the fees directly from you.

## Liens

The Missouri workers' compensation law restricts the Division of Workers' Compensation's ability to recognize third party liens or subrogation rights. Under current law, the Missouri Division of Workers' Compensation

can only recognize the following liens:

- Liens for medical expenses paid by the Missouri Department of Social Services (usually Medicaid payments); §287.266, RSMo;
- Child support liens; §287.260.2, RSMo; and
- Liens for attorney's fees; §287.260.1.

## Unemployment Compensation Benefits

Pursuant to §287.170(3), RSMo, an employer is entitled to a dollar-for-dollar credit against any workers' compensation benefit owed in an amount equal to the amount of unemployment compensation paid to the employee and charged to the employer during the same adjudicated or agreed-upon period of temporary total disability. This means that if you receive temporary total disability benefits under the workers' compensation law, and you receive unemployment compensation benefits from the same employer, you may be required to pay back some or all of the unemployment compensation benefits.

## Medicare Issues

Many injured workers who qualify for medical benefits under the Workers' Compensation law may also be covered by Medicare or may be covered by Medicare in the future.

Under federal law, Medicare is a "secondary payer" in many circumstances, including workers' compensation cases. In order to protect Medicare's potential interests, the Centers for Medicare & Medicaid Services (also known as "CMS"), a federal agency, should be notified about a potential workers' compensation settlement in certain instances. CMS must be notified *before* a settlement is presented to an Administrative Law Judge or Legal Advisor for approval. In many circumstances, CMS may require that a Medicare Set-Aside Trust be established and

approved before going forward with any workers' compensation settlement. It may take many months for CMS to decide whether, and under what circumstances, to allow the settlement to proceed.

### CMS should be notified under the following circumstances:

- (1) If the injured party is currently on Medicare, either by reason of age or Social Security Disability; or
- (2) If the injured party is not currently eligible for Medicare, but may qualify for Medicare benefits, by reason of age or Social Security Disability, within thirty months of the date of the settlement, AND the amount of the settlement is \$250,000 or more (excluding attorney's fees).

If the settlement is approved without CMS's review, the employer or insurer may be required to reimburse Medicare for future medical care to the injured party, or Medicare can refuse certain benefits in the future to the injured party.

### Other important considerations:

- The Administrative Law Judges and Legal Advisors cannot contact CMS. The parties and their attorneys are responsible for contacting CMS.
- As CMS may require many months to complete its review, settlements may be delayed. It is important to get CMS involved early on in the case to avoid long delays.
- The Administrative Law Judges and Legal Advisors have no control over the speed or the results of CMS's review.
- If you are awaiting CMS's review and have not filed a formal Claim for Compensation in your workers' compensation case, you need to do so, to avoid the running of the statute of limitations.

CMS's website address is:  
[www.cms.hhs.gov](http://www.cms.hhs.gov).

## Social Security Disability

If you believe that you are unable to return to any type of work, then, in addition to your workers' compensation claim, you may wish to apply for Social Security disability benefits.

You can apply for Social Security disability benefits at any Social Security office. You may also apply online at [www.ssa.gov](http://www.ssa.gov). You can call TOLL FREE 1-800-772-1213 for the location of the nearest office, or find it at [www.ssa.gov](http://www.ssa.gov).

If you are thinking about applying for Social Security disability benefits, if you have applied for Social Security disability benefits, or if you are already receiving Social Security disability benefits, you should know that any disability payments you receive from your workers' compensation case (even from the Second Injury Fund) may reduce your Social Security disability benefits either now or in the future. There is a way to potentially reduce or eliminate the impact of the workers' compensation settlement on your Social Security disability benefits. This can be accomplished by adding certain language to the settlement stipulation, or by adding an addendum to the settlement stipulation containing this language. This language must be included in the settlement at the time it is approved to be effective. If you have an attorney, your attorney should include this language in the settlement stipulation.

If you do not have an attorney, then you should raise this question to the Administrative Law Judge or Legal Advisor before agreeing to any settlement. The Administrative Law Judge or Legal Advisor may raise the question if you do not, but it is not their responsibility to do so.

There are different burdens of proof for Social Security disability and permanent total disability under the Missouri Workers' Compensation law. Qualification under any one of them does not guarantee qualification under the others.